



Department of Planning, Housing, & Community Development

Mayor, Richard C. David

Director, Jennie Skeadas-Sherry AICP

STAFF REPORT

TO: Planning Commission Members
FROM: Planning Housing and Community Development
DATE: July 31, 2014
SUBJECT: 351 Front Street; Use and Area Variances
TM ID #: 144.73-1-13
CASE: 2014-20

A. REVIEW REQUESTED

This application would establish a heavy vehicle storage and maintenance facility within the C-1 Service Commercial District. The proposed business would serve the applicant's existing towing business, located immediately across Franklin Street at 339 Front Street. As proposed the facility would operate five days a week between the hours of 8:00am and 5:00pm. The applicant approximates that 3-5 employees would work at the site daily. No customers would visit the site. Proposed improvements to the site would include a 3,000 square foot addition to the existing 4,972 square foot building, the resurfacing of the existing parking area, installation of a new concrete sidewalk, aprons and curbing on the southern side of the property, and landscaping along the eastern property line and a portion of the southern property line.

The proposed use is not permitted in the C-1 District; therefore a use variance is required.

In granting a use variance, the Zoning Board of Appeals must find the applicant has adequately demonstrated the following:

- (a). **Economic deprivation**: That under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question. Deprivation must be established by competent financial evidence;
- (b). **Unique circumstances**: That the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood;
- (c). **Neighborhood character**: That granting the variance will be in harmony with the spirit and intent of this ordinance and will not alter the essential character or quality of the neighborhood, endanger public health or safety, or substantially diminish or impair property values in the neighborhood.
- (d). **Self-created hardship**: That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in granting a use variance, shall grant the minimum variance that it shall deem necessary and adequate, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

Area variances are needed for the following:

Development Standard	Proposed	Required
Side yard setback (along Franklin Street)	0 feet	5 feet
Rear yard setback	10 feet	20 feet
Lot coverage	95 percent	70 percent maximum
Curb opening	80 feet wide	30 feet maximum

In granting an area variance, the Zoning Board of Appeals must weigh the benefit to the applicant if the variance is granted against the detriment to the health, safety, and welfare of the neighborhood or community by such a grant. The following must also be considered:

- (a). **Undesirable change**: Whether an undesirable change will be produced in the character of the neighborhood, or whether a detriment to nearby properties will be created;
- (b). **Reasonable alternative**: Whether the Applicant can achieve his goals via a reasonable alternative that does not involve the necessity of an area variance;
- (c). **Substantial request**: Whether the variance requested is substantial;
- (d). **Physical and Environmental Conditions**: Whether the requested variance will have an adverse impact on the physical or environmental conditions in the neighborhood or district;
- (e). **Self-created hardship**: Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in granting an area variance, shall grant the minimum variance that it shall deem necessary and adequate, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

B. ADDITIONAL REVIEWS

The Traffic Board has approved a variance for the width of the curb opening.

The proposed project is within 500 feet of a Broome County-owned facility, and is therefore subject to 239 distribution and comment by Broome County Department of Economic Development & Planning.

Series A Site Plan review by the Planning Commission is required. The Commission will also consider a 20% parking waiver from the Planning Commission to waive the need for 1 parking space, bringing the proposal into compliance with the off-street parking requirement.

C. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY

339 Front Street, 5 & 9 Franklin Street:

- The Zoning Board of Appeals approved a site plan modification request submitted by John Manculich in April of 2000 for an auto repair shop and auto rental facility.

- John Manulich received use and area variances in 1998 to operate an auto repair shop and auto rental facility.
- The Zoning Board of Appeals granted a use variance to Michael Honer in 1996 to allow a tire recycling center.

310 Front Street: March 2012: The Planning Commission granted Andrew Bozek a Special Use Permit and Series A Site Plan Review for an automobile repair shop in a C-1, Service Commercial Zoning District under the following conditions:

307 Front Street: February 2007: The Planning Commission granted Andrew Bozek a Special Use Permit and Series A Site Plan Review for an automobile repair shop in a C-1, Service Commercial Zoning District under the following conditions:

- No outside storage of materials is permitted in the required front and side setback areas.
- No outdoor storage of vehicle parts, waste products, or other materials is permitted unless appropriately screened from view.
- The number of junk vehicles permitted in the open shall not exceed three. Any other junk vehicles must be relocated to a completely enclosed garage or removed from the property.
- No outdoor storage of tires shall be permitted at any time.
- No materials will be stored in the front and side setback areas.
- Site plan 2006-33, dated 11/30/06, and revised on 12/06/2006 by Haas Landscape Architects is the approved site plan.

297 Front Street: December 2007: The Planning Commission granted Theo Totolis for Helen Blakeslee a Special Use Permit to operate an automobile repair/sales business in a C-1, Service Commercial zoning district under the following conditions:

- No materials will be stored in the front and side setback areas
- No vehicle parts, waste products, or other materials will be stored outside unless appropriately screened from view
- No junk vehicles will be permitted in the open
- No tires shall be stored outside at any time
- The existing storage trailer shall be removed from site by March 31, 2008.

D. ENVIRONMENTAL IMPACT

The applicant's proposal is a SEQR **Unlisted** Action. The Zoning Board of Appeals must be the lead agency to determine any environmental significance related to the variances.

1. Motion to determine what type of action:
 - a. Type I
 - b. Type II
 - c. **Unlisted**
2. Determine Lead Agency and other involved agencies.
3. After the Public Hearing, Determination of Significance. The Zoning Board of Appeals, acting as Lead Agency, is responsible for completing Part 2 & Part 3 of the Environmental Assessment Form (EAF)— see below.

SEQR EAF Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials

submitted by the project sponsor or otherwise available. When answering the questions the Zoning Board should be guided by the concept “Have our responses been reasonable considering the scale and context of the proposed action?”

	NO, OR SMALL IMPACT MAY OCCUR	MODERATE TO LARGE IMPACT MAY OCCUR
Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
Will the proposed action result in a change in the use or intensity of use of land?		
Will the proposed action impair the character or quality of the existing community?		
Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
Will the proposed action impact existing: A. public / private water supplies? B. public / private wastewater treatment utilities?		
Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		
Will the proposed action result in an increase in the potential for erosion, flooding or drainage Problems?		
Will the proposed action create a hazard to environmental resources or human health?		

EAF Part 3 - Determination of significance. For every question in Part 2 answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- If the Zoning Board of Appeals determines that the proposed action may result in one or more potentially large or significant adverse impacts an environmental impact statement is required.
- The Zoning Board of Appeals may issue a Negative Declaration if it is determined that the proposed action would not result in any significant adverse environmental impacts.

E. STAFF FINDINGS

Planning Staff has the following findings:

Use Variance Findings: Section 410.92C of the Zoning Code states that the Zoning Board of Appeals shall not grant a use variance until the applicant has shown that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant must demonstrate the following to the Zoning Board of Appeals:

(a) Reasonable return: the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

(b) Unique hardship: the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood.

To accommodate the Front Street Gateway Project the New York Department of Transportation took a portion of the applicants property located across the street from the subject site. This has resulted in a need to relocate the truck storage and maintenance. The subject site is ideally located across the street from the applicants existing business and therefore would be the most logical and efficient location to relocate the truck storage and maintenance portion of the applicant's business.

(c) Essential character of the neighborhood: granting the variance will not alter the essential character of the neighborhood.

Expanding this existing use from where it is located across the street would not dramatically alter the character of the neighborhood; while upgrades to the overall site, including buffering, perimeter landscaping, orderly striped parking, and reduced curb cuts will significantly improve the functionality and aesthetics of the site.

(d) Not self-created hardship: the alleged hardship has not been self-created.

To accommodate the Front Street Gateway Project the New York Department of Transportation took a portion of the applicants property located across the street from the subject site. This has resulted in a need to relocate the truck storage and maintenance.

Area Variance Findings: Section 410.92D states that where there are practical difficulties or special conditions which make regulations governing lot size, yard size, building height, solar access or any other regulations pertaining to bulk and not specifically related to use of land or buildings unreasonable or impossible to comply with, the Zoning Board of Appeals may vary or modify these regulations as long as the spirit of the regulation to be altered is observed. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant. In making such determination the Board shall consider:

(a) Undesirable change in neighborhood character: whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance(s).

There is an existing gasoline station / convenience market at this intersection. The existing development does not meet many of the development standards set forth in the Zoning Code, including lot coverage, buffering, or landscaping requirements. Expanding this existing use from where it is located across the street would not dramatically alter the character of the neighborhood; while upgrades to the overall site, including buffering, perimeter landscaping, orderly striped parking, and reduced curb cuts will significantly improve the functionality and aesthetics of the site.

(b) Alternative cure sought: whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance(s);

The existing development does not meet current Zoning Code requirements. The proposed upgrades to the site will bring the property closer into compliance.

(c) Substantiality: whether the area variance(s) requested is substantial;

The number of variances requested could be considered substantial.

(d) Adverse effect or impact: whether the requested variance(s) will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

Upgrades to the overall site, including buffering, perimeter landscaping, orderly striped parking, and reduced curb cuts will significantly improve the functionality of the site.

(e) Not self-created: whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance(s).

F. SUGGESTED CONDITIONS

1. Prior to the submittal of a building permit, a revised site plan shall be submitted to the Planning Department for review and approval which illustrates the location of a privacy fence along the west line subject to the provisions of Zoning Code Section 410-14. The plans shall include specifications and drawings of the height and materials proposed for the privacy fence.

I. ENCLOSURES

Enclosed are copies of the site plan, the application and site photos.

TLM